

PRIVY COUNCIL REPORTS

PL. AR. ARUNASALAM CHETTIAR & ORS. v.
AR. PL. PALANIAPPA CHETTIAR[P.C. (Lord Wilberforce, Lord Simon of Glaisdale and
Lord Kilbrandon) July 22, 1974]

[Privy Council Appeal No. 17 of 1969]

*Hindu Law — Mitakshara Law — Hindu Joint Family —
Member seeking partition — Entitled to accounts at time he
demands partition.*

In this case the respondent had obtained an order for the partition of a Hindu Joint Family. The question that arose was the date from which accounts should be supplied. The respondent claimed that the accounts should run from the date of the commencement of the firm. The appellants on the other hand contended that the accounts should run from the date of the decree of partition. The High Court decided this issue in favour of the respondent and this order was upheld in the Federal Court ([1969] 1 M.L.J. 55). The appellant appealed.

Held, allowing the appeal: there was nothing in this case to displace the general rule of Mitakshara Law that an account must be taken from the first unequivocal declaration by a member of the family of his desire to enforce a partition and as in this case the first unequivocal demand for partition was constituted by the commencement of the respondent's suit on the 15th July 1950, that was the date at which the appellant should account for the assets of the firm.

Cases referred to:-

- (1) *Ayyar v. Renganayake* A.I.R. 1955 Med. 394.
- (2) *Bhivray v. Sitaram* (1895) I.L.R. 19 Bom. 532.

PRIVY COUNCIL APPEAL FROM MALAYSIA.

T. O. Kellock Q.C. and Eugene Cotran for the appellants.

Respondent *ex parte*.

Lord Simon of Glaisdale (delivering the reasons for the report of the Board): There has been extensive litigation between the parties to this appeal in the courts of both India and Malaysia. The substantive issue was whether the assets of a money-lending concern at Port Dickson in Malaysia (known as "the PL.AR. Firm"), which became possessed also of landed property in Malaysia, were, as the respondent contended, part of the estate of a Hindu Joint Family (its coparceners consisting of the appellants and the respondent; the first appellant having been the *karta*, or manager, on behalf of the Family) or, as the appellants contended, the assets of the firm were the personal property of the first appellant. That issue was finally decided in favour of the respondent. The only remaining issue between the parties is as to the date from which accounts of his management of PL.AR. should be filed by or on behalf of the first appellant. The respondent claimed that the accounts should run from the date of the commencement of the firm on the 22nd August 1926. The appellants contended that the accounts should run from the date of the decree of partition of the Hindu Joint Family, namely, the 25th October 1963. The High Court in Malaya at Seremban (Ismail Khan J.) decided this issue in favour of the respondent, and ordered accordingly. His order was upheld by the Federal Court of Malaysia (Azmi C.J., Ong Hock Thye and Suffian F.JJ.). The appellants brought an appeal to the Privy Council. The first appellant died during the pendency of the appeal; but their Lordships of the Privy Council directed that the appeal should

A proceed for hearing without revivor proceedings. The respondent did not himself appear, nor was he represented, on the hearing of the appeal to the Board.

The disputes between the parties broke surface in 1950; and on the 15th July 1950 the instant respondent filed a suit against the instant appellants in the Court of the Subordinate Judge of Devakottai in India. Claiming that the assets of PL.AR. (*inter alia*) were assets of the Hindu Joint Family alleged by him, the instant respondent sought partition of the Joint Family property. While the suit was still pending in India the instant respondent, on the 2nd April 1951, started similar proceedings in the High Court in Malaya at Seremban in relation to what he alleged to be Joint Family property in Malaya (the assets of the PL.AR. Firm): he did this partly, presumably, because the Indian courts would have no jurisdiction as to the immovable assets in Malaya, partly because, as he claimed, the first appellant had from October 1950 been disposing of the assets (so that the instant respondent desired to enter caveats in Malaya). On the 1st April 1952 the Subordinate Court of Devakottai in India, even though recognising that it had no jurisdiction as to the immovable assets in Malaya, held that PL.AR. and its assets belonged exclusively to the first appellant as his own separate property. The instant respondent appealed to the High Court of Madras. Before this appeal was heard, on the 3rd December 1954 the High Court at Seremban made a consent order staying the proceedings in Malaya pending final determination of the Indian proceedings, the instant appellants agreeing to abide by such determination. The Madras High Court substantially determined the question of ownership of PL.AR. in favour of the instant appellants; but its judgment was reversed by the Supreme Court of India on the 25th October 1963. The Indian Supreme Court declared that PL.AR. and its assets belonged to the Hindu Joint Family, the instant respondent being entitled to a one-third share: appropriate directions were to be obtained by the parties from the High Court at Seremban. This date, the 25th October 1963, was claimed by the instant appellants to be the date of the effective partition of the Joint Family Estate and as such the proper date for an account to be taken.

In consequence of the judgment and order of the Supreme Court of India, on the 11th July 1964 the High Court at Seremban ordered (*inter alia*) "that an account be taken of the movable and immovable properties of the said Hindu Joint Family and the amounts due to the plaintiff [the instant respondent] from the Hindu Joint Family estate or from the first defendant [the first appellant in this appeal]". The instant appellants appealed to the Federal Court of Malaysia, who dismissed the appeal; although adding to the order of the lower court an amendment of importance to the instant appeal, namely: "That the issues adjudicated upon by the Supreme Court of India... be binding on the parties when taking accounts." Neither the order of the High Court at Seremban nor that of the Federal Court specified from what date the accounting should start — presumably because the date was not at that time in issue. But the matter was subsequently raised in an application for consequential orders and directions. On the 21st March 1968 Ismail Khan J. directed the first instant

appellant to file accounts of his management of PL.AR. from the date of its commencement as found by the Indian Supreme Court, namely, the 22nd August 1926. The instant appellants appealed to the Federal Court of Malaysia, contending for the 25th October 1963 as the proper accounting date. On the 4th November 1968 the Federal Court dismissed the appeal.

It was common ground that the matter fell to be decided by Mitakshara law, as the personal law of the parties. It was also common ground (or at least indisputable) that by that law a member of a Hindu Joint Family who seeks partition is ordinarily entitled only to an account of the Family property as it exists at the time he demands partition — he is not entitled to open up past accounts (see *Mayne's Hindu Law and Usage*, 11th ed. paragraph 416, page 517; *Mulla's Hindu Law*, 11th ed. page 282, section 238; Derrett, *Introduction to Modern Hindu Law*, 1963, page 263, paragraph 427; *Ayyar v. Renganayake*⁽¹⁾). These authorities established also that there is an exception to the general rule, namely, where a coparcener distinctly alleges and establishes fraud or misappropriation by the *karta*. No such allegation was made in the instant litigation — it was a plain dispute as to whether PL.AR. was established out of Joint Family property or the first appellant's, and whether the latter managed it on behalf of the Family or on his own behalf. Azmi C.J. held, however, (Suffian F.J. concurring) that the case fell within another rule, whereby a coparcener who has been entirely excluded from the enjoyment of the Family property is entitled to mesne profits — involving an account of the Family property, so that the wrongfully excluded coparcener may have his share of the income ascertained and paid to him (see *Bhivray v. Sitaram*⁽²⁾). But, in their Lordships' view, no such rule has any application in the instant case. In the first place, the instant respondent made no claim for mesne profits. Secondly, his case, as appears from the judgment of the Indian Supreme Court (which accepted it), was that, so far from being excluded from the enjoyment of the Family property, he was an active and passive participant.

This second consideration marks the late point where their Lordships feel bound to depart too from the judgment of Ong F.J. (as he then was). What impelled Ong F.J. finally to accept the 22nd August 1926 as the date from which accounting should run was that he held the case to fall within a passage which he quoted from *Mayne (op. cit., page 519)*:

"So, if a member of a joint family is wrongfully excluded from the enjoyment of the family property and subsequently establishes his position as a member, his right of action accrues at the date of his exclusion; and he will be entitled as from that time to an account such as would have to be rendered by a trustee".

But, first, that passage is an application of the rule stated in the immediately preceding passage:

"But ... its object [the taking of accounts] is not to call upon the manager to justify past transactions, but to ascertain what is the joint property actually in his hands at the time of partition ... The time from which such an account can be demanded ... will be the date of the first unequivocal declaration by a member of the family of his desire to enforce a partition".

- A Secondly, it was not the respondent's case that he was wrongfully excluded from the enjoyment of the property of the Family of which he subsequently established himself as a member: his case was that he was always accepted as a member of the relevant Family; and the dispute was whether PL.AR. was personal or Family property. Thirdly, as has been pointed out, the finding of the Indian Supreme Court was that the instant respondent was correct in his contention that the evidence showed him to have been an active and passive participant in the Family.

- B Their Lordships are therefore of opinion that there is nothing here to displace the general rule of Mitakshara law that an account must be taken as from the date of the first unequivocal declaration by a member of the Family of his desire to enforce a partition; although an inquiry as to what the Family property was at that time may involve the taking of past accounts (this would be a matter for further directions). So far as the evidence before their Lordships goes, the first unequivocal demand for partition was constituted by the commencement of the instant respondent's suit in the Court of the Subordinate Judge of Devakottai on the 15th July 1950. This is, in their Lordships' view, the date at which the first appellant should account for the assets of the PL.AR. Firm.

- C This date is intermediate between those claimed respectively by the appellants and respondent. Their Lordships consider, in these circumstances, that the appropriate order as to the costs of the appeal to the Board is that they should be paid from the Estate of the Hindu Joint Family. A similar costs order was made by the Federal Court, which there is no reason to disturb.

- D For these reasons their Lordships have reported to the Yang Dipertuan Agung their opinion:

- (1) that that part of the Order of the 4th November 1968 dismissing the appeal to the Federal Court should be set aside and the Order of the High Court varied by substituting the words "from 15th July 1950" for the words "from the date of commencement"
- (2) that the case should be remitted to the High Court for appropriate further directions as to the date by which accounts should be filed and any other matters incidental to the taking of the accounts
- (3) that the costs of this appeal as taxed between solicitor and client be paid out of the Estate.

Appeal allowed.

Solicitors: *Wilson Freeman.*